

## **REMARKS/ARGUMENTS**

Claims 1, 2, 4-9 and 11 are currently pending in this application. Claims 1 and 2 have been amended. Reconsideration of the rejection of the claims in view of the amendments and the following arguments is respectfully requested.

### **Claim Rejections – 35 USC § 101**

Claims 3-10 were rejected as being as being drawn on unstatutory subject matter. It is assumed that the Examiner meant to specify claims 1-2 and 4-10. The Examiner takes the position that the recitation of the electrode locations seemed to claim the body part of the human as well which is impermissible. In accordance with the Examiner's suggestion, the claims have been amended to change the phrase to "adapted to be located". With this amendment, Applicant respectfully submits that this rejection of the claims under 35 U.S.C. 101 has been overcome and requests it be withdrawn.

### **Claim Rejections – 35 USC § 112**

The Examiner has rejected claims 1-2, 4-10 under 35 USC § 112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the Examiner cannot find support in the Applicant's specification of the "extension" portion of the signal. In this connection, it should be noted that Figure 4 clearly shows the signal as being divided into a rise time, stimulation time, extension time, and fall time. It follows that these terms correspond to the "rise portion, stimulation portion, extension portion, and fall portion" of the signal as referred to in the claims. In other words, "extension time" as indicated in Figure 4 is a portion of the signal. Therefore this may be referred to as "extension portion". Looking at it another way, since

Figure 4 clearly shows that the signal is made up of rise time, stimulation time, extension time and fall time, each one of those times must be a part or portion of the signal. This leads to the conclusion that since the extension time is a portion of the signal, such portion may be aptly referred to as the "extension portion".

The Examiner also asserts that it cannot be found in the specification where the recording member can be programmed to record at certain hours, days or dates. In this regard, page 8 specifically sets forth that the computer has a data logging function to record the hours of use and number of steps walked by the patient.

Also, as explained on page 14, in connection with Figures 19, 20 and 21, it is clear that the patients walking pattern can be recorded, including the number of steps and walking time in a selected hour or a day or from a period of dates. Unless the computer is prepared to record the duration of use and number of steps taken, such information cannot be downloaded and displayed as shown in the Figures. As the specification at page 8 goes on to say, the physician can use such information to learn more about the daily life pattern of the patient in order to help prescribe a more suitable time schedule of walking exercise and use such information to monitor overuse or insufficient walking exercise by the patients. The specification specifically states that this information is recorded in a logged file. Again, unless this information is recorded, it cannot be called up for viewing.

In view of the above, it is submitted that claims 1-2 and 4-10 do comply with 35 USC § 112, first paragraph.

### **Claim Rejections – 35 USC § 103**

Claims 1-2, 4-7, and 9-10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Haugland et al US 2003/0144710 in view of Nelson et al USPC 5,586,557. The Examiner has taken the position that the plateau region of the stimulation profiles in figures 14+ of the Haugland reference includes an initial stimulation that is the first  $\frac{1}{4}$  of the plateau followed by an extension portion in

the remaining  $\frac{3}{4}$  of the plateau duration. The Examiner goes on to say that based on the lack of support in the specification, the Nelson reference would suggest recording that would support the claim language.

Independent claim 1 sets forth that the controller is programmed to record a duration of use and a number of movement events during the duration of use, as well as outputting to the electrode a stimulation signal comprising a rise portion, a stimulation portion, an extension portion and a fall portion.

Independent claim 2 sets forth a controller programmed to record in a log file a number of steps and duration of walking movements in a time period comprising one of an hour, a day or between a period of dates, and wherein the control signal comprises a rise portion, a stimulation portion, an extension portion and a fall portion for each walking movement.

As mentioned above, it is submitted that the claim language regarding the "programmable recording" is clear and fully supported by this specification. It is further submitted that Nelson does not suggest this feature. Nelson merely discloses recording the duration of walk and number of steps in a preset distance of between 3 and 6 meters. This is not strictly the same as recording the number of steps and duration of walking movements in a given time period which may comprise an hour a day or from a period of dates (i.e., how long a person walks and how many steps a person takes, not necessarily continuously, but in a defined period of time). In accordance with the claimed invention, a physician can learn about the daily walking pattern of the patient to help prescribe a more suitable time schedule of walking exercise for each individual user. Nelson only allows a step or stride profile to be established.

It is submitted that the proposed combination of the Nelson and Haugland patents will not result in the claimed invention. To establish a prima facie case of obviousness under 35 U.S.C. § 103, the combination of references must teach each and every limitation of the claims. Neither the Haugland nor Nelson teach

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the manner of programmable recording as set forth in the claims. Accordingly, claims 1, 2, 4-7 and 9-10 are patentable over the cited art.

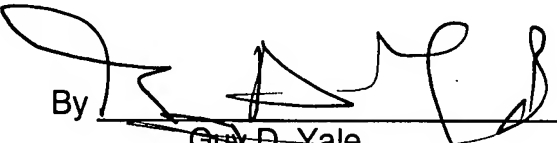
Claim 8 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Haugland et al in view of Nelson, and further in view of Sieracki et al., US 2004/0143302. Claim 8 is indirectly dependent upon claim 2 and is patentable for the reasons set forth above in connection with claim 2.

### CONCLUSION

In view of the above amendments and remarks, it is respectfully submitted that the claims set forth in this application patently define over the cited art taken alone or in any combination. Favorable consideration of the claims is earnestly solicited.

Respectfully submitted,

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